M/s NHPC Limited, Admin Building, Tanakpur Power Station, Banbasa, Uttarakhand

Authority for Advance Ruling — Uttarakhand

Ruling No. 10/2018-19, dated 22nd October 2018 (Application No. 11/201… Dated **22.10.2018**

Q Questions Before the Authority

- Whether the applicant is required to pay GST under reverse charge in terms of Notification No. 13/2017 dated 28.06.2017 while making payment to PWD, Uttarakhand for construction of a road.
- What is the time of supply when advance payment is released to PWD, Uttarakhand.
- Whether the amount deposited with the Central Fund, i.e. Uttaranchal CAMPA, and reimbursed by MEA, considered as part cost of the road, is liable to GST.

F Facts

NHPC, a Mini Ratna Category-I enterprise under the Ministry of Power, has entered into an MoU with PWD, Uttarakhand for construction of a road from Tanakpur Barrage to Brahmdev in Nepal on deposit-work basis under the Mahakali Treaty. The Ministry of External Affairs (MEA) entrusted the work to NHPC and PWD and funds it from its 'Aid to Nepal' budget head, with NHPC acting as implementing agency and able to spend first and be reimbursed. NHPC sought a ruling on whether it must pay GST under reverse charge when paying PWD, the time of supply for advances, and GST on the CAMPA amount reimbursed by MEA.

H Ruling

Reverse charge under Notification 13/2017 on payment to PWD for road construction	**No. GST under reverse charge does not arise; no GST applicable**	Turns on the underlying supply to MEA being exempt under entry 9C of Notification 12/2017-CT(Rate); sub-contracted work inherits the exemption.
Time of supply when advance payment is released to PWD	**No GST provisions applicable on this issue**	Held academic because the supply in question falls under exempted services.
GST on CAMPA amount deposited with Central Fund and reimbursed by MEA	**No GST provisions applicable on this issue**	Held academic because the supply in question falls under exempted services.

The authority held that no GST is applicable on the applicant's activity , because the supply of service by NHPC to MEA is exempt under entry 9C of Notification No. 12/2017-Central Tax (Rate), as amended. Since the original supply is exempt, the sub-contracting of the work to PWD is also exempt, so reverse charge under Notification No. 13/2017 does not arise. The time-of-supply and reimbursement questions were therefore held to be academic, as no GST provisions apply to them.

R Reasoning

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

The authority treated construction of a road as a works contract, which Schedule II of the CGST/SGST Act treats as a supply of services. It found NHPC to be a 'Government Entity' under the amended definition in entry 9C, because the President of India, through nominees, held 100 per cent equity at establishment, even though later shareholding may have diluted. It then checked the four conditions: a Government Entity provider, a Central Government receiver (MEA), consideration in the form of grants, and work entrusted by the Central Government. Relying on the GST Council's 25th meeting recommendation and Circular No. 147/16/2011-ST, which applied the pre-GST sub-contracting exemption, it held that the sub-contractor's supply to NHPC is exempt as well.

P Provisions Relied On

- Section 97(1) and 97(2)(b), (c) of the CGST/SGST Act, 2017
- Section 100(1) of the CGST/SGST Act, 2017 (appeal period of 30 days)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, entry 9C, as inserted by Notification No. 32/2017-Central Tax (…
- Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 (reverse charge)
- Schedule II of the CGST/SGST Act, 2017 (works contract and construction entries)
- Entry 'Government Entity' in the amended notification, read with Article 243W of the Constitution
- Patna High Court judgment dated 03.03.2016 in CWJC No. 16965 of 2015, Shapoorji Pallonji & Co. Pvt. Ltd. v. CCE
- Serial No. 29(h) of Notification No. 25/2012-Service Tax dated 20.06.2012 (pre-GST mega exemption)
- Circular No. 147/16/2011-Service Tax dated 21.10.2011
- Recommendations of the 25th GST Council meeting on works contract rates

! For the Practitioner

This ruling helps Government-owned entities acting as implementing agencies for Central Government funded works, because it extends entry 9C exemption to them and to their sub-contractors on the same work. A practitioner should read the Government Entity analysis closely, since the authority accepted that 90 per cent government holding at establishment is enough even if it later dilutes. The order does not decide the time-of-supply or reimbursement questions on their merits, and as an advance ruling it binds only the applicant. It is open to appeal under Section 100(1) within 30 days.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> uttrakhand_10-2018-19_dtd_22.10.18_nhpc.pdf

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